



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
MILIMANI ENVIRONMENT AND LAND COURT
ELC NO. 1259 OF 2013
AS CONSOLIDATED WITH ELC NO. 1365 OF 2013

FREDRICK KANG'ETHE CHEGE.....
PLAINTIFF

=VERSUS=

ELIZABETH STANLEY MURIUKI1ST
DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED2ND
DEFENDANT

CHIEF LAND REGISTRAR3RD
DEFENDANT

OFFICE OF THE ATTORNEY GENERAL4TH
DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 8th October 2025, brought under Section 80 of the Land Registration Act, in which the Plaintiff/Applicant seeks the following orders:

- a. Spent.**
- b. Spent.**
- c. Spent.**
- d. THAT a temporary injunction be issued on the 1st, 2nd, and 3rd Defendant/Respondent restricting any further dealing or interference with NAIROBI/BLOCK136/10578 and NAIROBI/BLOCK136/10577 pending the hearing and determination of this application and suit to its conclusion.**
- e. THAT this Honourable Court be pleased to issue a Declaration that the decision by the 3rd Defendant/Respondent to issue the Certificate of Lease to NAIROBI/ BLOCK136/10578 in favour of the 1st Defendant was ultra vires, illegal, sub judice, or outside the mandate of the 3rd Defendant/Respondent or the co-Defendants in this case.**
- f. THAT orders be issued on the 3rd Defendant/Respondent to rectify the register guided under Section 80 of the Land Registration Act by cancellation of the Certificate of Lease for NAIROBI/BLOCK136/10578 issued illegally to the 1st Defendant/Respondent.**
- g. THAT the 1st, 2nd & 3rd Defendants/Respondents be compelled to provide copies of all documents**

relating to the registration of title in NAIROBI/BLOCK136/10578.

h. THAT a right to indemnity under Section 81 of the Land Registration Act be vested on the Plaintiff/Applicant jointly or severally against the 1st, 2nd, and 3rd Defendant/Respondent due to the Registration of Title in NAIROBI/ BLOCK136/10578 in favour of the 1st Defendant/Respondent while initially it was registered in his favour.

i. THAT the Defendants be condemned to pay Costs for this Application.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Fredrick Kang'ethe Chege, sworn on even date.

THE APPLICANT'S CASE

3. It is the Applicant's case that he purchased two parcels of land from the late Mary Mwieria Mutugi, a shareholder of the 2nd Defendant, who was allocated the plots by the 2nd Defendant through member certificates issued in December 2009.
4. He stated that after paying the required survey and engineering fees for both parcels on 9th February 2010, the 2nd Defendant assured him that the allocations were legitimate. This assurance was supported by a registered survey map and verification conducted by a licensed surveyor affiliated with the 2nd Defendant.

5. He stated that on 10th October 2013, he filed this suit against the 2nd Defendant after individuals he believed to be agents of the 2nd Defendant trespassed onto the land, interfered with his developments, and claimed that the property had been sold to another person who was later identified as the 1st Defendant. He also mentioned that the 1st Defendant filed a separate suit against him in ELC Case No. 1365 of 2013 in November 2013, which was eventually consolidated with this suit in 2019.
6. He stated that when the suits were filed, neither party had a registered title to the land known as NAIROBI/BLOCK 136/10578, and both relied on share certificates and survey maps to support their claims.
7. He averred that the 1st Defendant failed to produce any registered survey map to support her claim and that the parties' documents referenced different share certificates, which the 1st Defendant claimed to relate to the same parcel of land. He argued that his plots could be identified on the registered survey map and that he has been in possession and occupation since 2009.
8. He explained that after paying the required registration fees, the 2nd Defendant told him that a lease certificate for NAIROBI/BLOCK 136/10578, covering 0.1008 hectares, was issued in his name on 29th March, 2019, but it was withheld due to a dispute over ownership.

9. He further averred that on 7th October 2020, a lease certificate for Nairobi Block 136/10577, measuring 0.1008 hectares, was issued to him through the same process without any dispute. He stated that his claim to NAIROBI/BLOCK 136/10578 was withheld by the 2nd Defendant.
10. He stated that during the pendency of the suit, the 2nd Defendant was restrained from alienating or otherwise dealing with the suit property, and that these orders remained in force throughout the proceedings.
11. He asserted that in August 2020, the 1st Defendant was issued a lease certificate for NAIROBI/BLOCK 136/10578 during the pendency of this suit and without prior notice to him. He argued that the land register was opened only in 2020, making it impossible for him to lodge a caution or restriction before then.
12. He argued that the 1st Defendant's title was based on an illegal and invalid transfer document prepared and attested by someone unqualified, in violation of the law. He also claimed that the lease certificate issued to the 1st Defendant was void due to illegality, fraud, misrepresentation, or mistake as outlined in Section 26 of the Land Registration Act.
13. The Applicant is apprehensive that the 1st Defendant might dispose of or otherwise deal with the suit property, which could render the proceedings nugatory if the case is ultimately decided in his favor. He argued that the

registration of the title during the pendency of the case undermines the Court's authority and causes him irreparable harm

14. In conclusion, he urged the Court to allow the application as prayed.

1ST DEFENDANT'S CASE

15. The 1st Defendant filed a replying affidavit dated 26th January 2026 in opposition to the application. She averred that she is the lawful and rightful proprietor of the suit property known as NAIROBI/BLOCK 136/10578, having been duly allocated the property by the 2nd Defendant.
16. She further averred that after the allotment, she was issued a lease certificate for the suit property. She emphasized that she never indicated any intention to sell, transfer, charge, dispose of, or otherwise alienate the suit property.
17. She explained that the reliefs sought by the Plaintiff were final in nature and could not be granted before the suit is heard and determined.
18. She explained that she could not comply with the order to produce documents because she was neither the custodian of the documents nor responsible for registering titles.
19. She argued that the Applicant did not meet the threshold for granting the orders sought because he failed to

demonstrate a prima facie case, irreparable harm, or that the balance of convenience favored him.

20. She specifically argued that the Applicant did not demonstrate any proprietary interest in the suit property, failed to prove he would suffer irreparable harm if the orders were denied, and that the balance of convenience favored her as the registered owner of the property.

21. On that basis, the 1st Defendant argued that the application is misconceived, bad in law, frivolous, vexatious, and an abuse of the Court process, and accordingly urged the Court to dismiss it with costs. The Applicant filed a further affidavit dated 17th February 2026 denying the contents of the replying affidavit. The 2nd, 3rd, and 4th Defendants did not file any response to the application.

22. The application was canvassed by way of written submissions.

PLAINTIFF'S SUBMISSIONS

23. The Plaintiff filed his submissions dated 8th December 2025.

24. On behalf of the Plaintiff, Counsel argued that the lease and transfer documents forming the basis of the title were drafted and attested by an unqualified person. Counsel maintained that the advocate who certified the transfer in 2020 was not qualified to serve as a commissioner for oaths, because he was admitted to the Bar in 2018 and had not practiced for three years as required by the Oaths and Statutory Declarations Act. Counsel contended that the

attestation was unlawful, rendering the transfer and certificate of title null and void ab initio.

25. Counsel relied on Sections 3, 4, and 7 of the Oaths and Statutory Declarations Act, Rule 2 of the Oath and Statutory Declaration Rules, and Section 34 of the Advocates Act to argue that the preparation and attestation of conveyancing documents by an unqualified person render such instruments illegal and unenforceable. Counsel further cited the decision in **National Bank of Kenya Limited v Anaj Warehousing Limited [2015] KESC 4 (KLR)** to assert that documents prepared or attested by persons without legal qualifications are void.
26. Counsel argued that, even if the attestation was otherwise lawful, registering the lease and issuing the title during the ongoing suit violated the doctrine of lis pendens. Counsel contended that the registration transferred ownership rights in property already involved in active litigation, with the parties to the transaction being participants.
27. Counsel argued that the 1st, 2nd, and 3rd Defendants acted unlawfully by registering the suit property in favor of the 1st Defendant while the dispute was still pending in Court. Counsel submitted that the 2nd Defendant had previously told the Plaintiff that a title had been issued in his favor, but was withheld due to the dispute. Counsel argued that the subsequent registration in favor of the 1st Defendant occurred without notice, consent, or court approval.

28. Counsel submitted that the Plaintiff neither transferred nor agreed to transfer any interest in the suit property to the 1st Defendant, and that the registration created two competing titles over the same parcel of land. Counsel further submitted that this registration fundamentally changed the nature of the case by introducing a registered title during the proceedings, thereby unfairly increasing the evidentiary burden on the Plaintiff.
29. Counsel contended that issuing the title while the case was still pending compromised the Plaintiff's right to a fair trial and fair administrative process. Counsel contended that Section 26 of the Land Registration Act presumes the indefeasibility of a registered owner, which puts the Plaintiff at a procedural disadvantage and effectively resolves the dispute without a trial.
30. Counsel argued that registering the title in favour of the 1st Defendant and disregarding the doctrine of lis pendens was inequitable and ultra vires. To support this argument, Counsel relied on **Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna, 5 others (2017) KECA 79 (KLR)**, and **Baber A Mawji v United States International University & another [1976] KEHC 16 (KLR)**.
31. It was submitted that unless interim relief was granted, the 1st Defendant might dispose of, charge, or transfer the suit property to third parties, thereby rendering any eventual

judgment nugatory and exposing the Plaintiff to the risk of protracted and unending litigation.

32. Counsel submitted that the Plaintiff had satisfied the criteria for the grant of a temporary injunction outlined in **Giella v Cassman Brown (1973) EA**. In conclusion, Counsel urged the Court to allow the application as prayed.

THE 1ST DEFENDANT'S SUBMISSIONS

33. The 1st Defendant filed her submissions dated 12th February 2026.

34. On behalf of the 1st Defendant, Counsel submitted that for an injunction to issue, the Applicant must satisfy the three conditions set out in **Giella vs Cassman Brown & Co Ltd (1973) EA 358**.

35. On the first condition, Counsel cited **Mrao Ltd v First American Bank of Kenya Ltd & 2 others (2003) eKLR** to argue that the Applicant had failed to establish a prima facie case as he has not demonstrated any proprietary interest in the suit property. Counsel further submitted that the 1st Defendant is the registered proprietor of the suit property as she holds a valid lease.

36. Regarding the second condition, Counsel submitted that the Applicant has not demonstrated that he will suffer irreparable harm if the injunction is not granted. Counsel contended that unfounded fear does not meet the standard for irreparable injury.

37. Counsel submitted that the balance of convenience favours the 1st Defendant because she is the registered proprietor and occupant of the suit property.

38. In conclusion, Counsel submitted that the application is an abuse of the Court process and should be dismissed with costs.

ANALYSIS AND DETERMINATION

39. Having considered the application, the respective affidavits, and the rival submissions, the following issues arise for determination:

a) Whether the Plaintiff has met the legal threshold for the grant of an injunction.

b) Whether the orders under Sections 80 and 81 of the Land Registration Act should issue

c) Whether the Defendants should be compelled to produce all documents related to the registration of title in NAIROBI/BLOCK136/10578.

40. Regarding the first issue, the principles for granting an injunction were outlined in **Giella v Cassman Brown (1973) EA 358** as follows:

a) First, the applicant must show a prima facie case with a probability of success.

b) Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.

c) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.

41. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success. A prima facie case was defined **in Mrao Ltd v First American Bank of Kenya and 2 others, (2003) KLR 125,** as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case”. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

42. The dispute between the parties revolves around the ownership of NAIROBI/BLOCK 136/10578. The Plaintiff raised pertinent questions regarding the legality and validity of the process by which the 1st Defendant's title was issued, including allegations of illegality in the preparation and certification of transfer documents and violations of the doctrine of lis pendens.

43. At the interlocutory stage, the Court is not required to make final findings on the contested matters. The issues of ownership can only be determined in a full trial where parties will have an opportunity to call evidence and challenge the same by way of cross examination.
44. Based on the evidence presented before me, I find that the Applicant has established a prima facie case.
45. On whether the Applicant will suffer irreparable harm that cannot be adequately compensated by damages, the Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured.
46. The Plaintiff has demonstrated that the contested registration grants the 1st Defendant powers of disposition that, if exercised during the course of the suit, could undermine or significantly hinder the enforcement of any final judgment.
47. The risk of alienation during ongoing litigation exposes the Plaintiff to prejudice that cannot be adequately compensated by damages, including the likelihood of multiplicity of suits.
48. On the balance of convenience, the Court must weigh the hardship to be borne by the Applicant by refusing to grant the injunction against the hardship to be borne by the Respondents by granting the injunction. Based on the evidence presented by both parties, I find that the balance of convenience favours maintaining the status quo of the

suit property pending the hearing and determination of the suit.

49. The Plaintiff seeks the cancellation of the title issued to the 1st Defendant. He argued that the title was unlawfully issued after he had already received one and was based on an illegal and invalid transfer instrument, which had been drawn and commissioned by an unqualified person in violation of the law and was issued in the course of these proceedings, contrary to the doctrine of lis pendens.

50. Section 80 of the Land Registration Act provides as follows:

“(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2). The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

51. The Plaintiff also asserts a right to indemnity under Section 81 of the Land Registration Act, which states that anyone

who suffers damage due to any rectification of the register under the Act, or any error in a copy or extract from the register or in a certified copy of any document or plan under this Act, is entitled to be indemnified.

52. Rectification of the register and indemnification are substantive remedies that involve final determinations of fraud, illegality, mistake, or liability. Such determinations cannot be properly made based on affidavit evidence at the interlocutory stage.

53. While the Plaintiff has raised concerns regarding the validity of the registration process and the relevance of the doctrine of lis pendens, these issues can only be conclusively resolved after a full hearing.

54. Regarding the third issue, the Plaintiff seeks orders to compel the 1st, 2nd, and 3rd Defendants to produce all documents related to the registration of title in NAIROBI/BLOCK 136/10578.

55. Section 22 of the Civil Procedure Act empowers the Court to issue orders regarding the discovery and production of documents. It states as follows:

“Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

i. make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories,

the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

ii. issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

iii. order any fact to be proved by affidavit.

56. Under Order 16 Rules 6 and 7 of the Civil Procedure Rules, the Court may suo moto or on application by a party summon any person it considers a necessary witness, whether to give testimony or to produce documents.

57. It is not in dispute that the titles were registered during these proceedings, amid an ongoing ownership dispute. The legality and regularity of this process are central to the dispute before the Court.

58. The documents sought are therefore relevant and necessary for a fair determination of the issues in dispute. Requiring their production will enhance transparency, procedural fairness, and equality of arms between the parties.

59. The order sought does not unjustly prejudice the Defendants, nor does it determine the merits of the case. It merely facilitates the efficient management of the case and

ensures that the Court possesses all requisite materials at trial.

60. In the end, the application dated 8th October 2025 partially succeeds on the following terms:

a. A temporary injunction is hereby issued restraining the 1st, 2nd, and 3rd Defendant/Respondent, restricting any further dealing or interference with NAIROBI/BLOCK136/10578 and NAIROBI/BLOCK136/10577 pending the hearing and determination of this suit to its conclusion.

b. The 1st, 2nd, and 3rd Defendants are hereby directed to produce and furnish to the Plaintiff copies of all documents relating to the registration of title in respect of NAIROBI/BLOCK 136/10578 within thirty days from the date hereof.

c. Costs of the application shall abide by the outcome of the suit.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 18TH DAY OF MARCH, 2026.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Wangare Ndirangu for the Plaintiff
Vena - Court Assistant